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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/616,526	07/10/2003	Gerd Breiter	DE920020011US1	1217
7590 12/05/2007 Leslie J. Payne, IBM Corporation, Dept. 917 3605 Highway 52 North Rochester, MN 55901-7829			EXAMINER HUSSAIN, TAUQIR	
			ART UNIT 2152	PAPER NUMBER
			MAIL DATE 12/05/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/616,526

Applicant(s)

BREITER ET AL.

Examiner

Tauqir Hussain

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 November 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/10/2003.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Continued Examination under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/12/2007 has been entered.

### ***Response to Amendment***

2. This office action is in response to amendment /reconsideration filed on 11/21/2007, the amendment/reconsideration has been considered. Claims 1, 3, 5 and 11 have been amended and therefore, claims 1, 3-15 are pending for examination, the rejection cited as stated below.

### ***Response to Arguments***

3. Applicant's arguments have been fully considered but are moot in view of the new ground(s) of rejection.

### ***Claim Objections***

4. Claim 1 recite, "retrieving and considering the stream **server's capabilities**". The word capabilities render indefiniteness in its entirety and therefore correction is required as server merely capable of performing certain functions does not imply whether server will perform or do not perform or perform occasionally.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 1, 3-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kenner et al. (Patent Number.: US 6112239), hereinafter "Kenner" in view of Murto et al (Pub. No.: US 2004/0213409 A1), hereinafter "Murto".

6. As to claims 1, Kenner discloses the invention substantially, including, retrieving a list of stream servers (Kenner, Col.5, lines 46-47, where various sites are interpreted as stream servers and Fig.2, Col.5, lines 57-60, where database is a directory service from which stream servers name can be retrieved upon client request),

evaluating the list of stream servers (Col.5, lines 42-43),

selecting one of the stream servers on the list (Col.5, lines 61-63), and

initiating streaming from the selected stream server (Col.5, lines 37-40, where having the file delivered to the user's terminal after site selection and evaluation streaming must have been initialized), wherein the step of evaluating the list of stream servers further comprises the steps of:

Retrieving and considering the stream server's capabilities (Kenner, Fig.2, Col.9, lines 39-49, where site preference is based on servers capabilities),

Retrieving and considering the format(s) in which the media file is presented (Kenner, Abstract, where retrieving of video data at distributed sites are data format, in which the media file will is presented), and

Retrieving and considering preferences from the client (Kenner, Fig.2, Col.9, lines 53-63, where configuration utility-34 is used to configure client as well as server respective to each specific client with probable server by collecting preferences from both sides).

Kenner however is silent on disclosing explicitly, "a universal description, discovery and integration (UDDI) directory service".

Murto however discloses, "a universal description, discovery and integration (UDDI) directory service" (Murto, [0021], where websites are search according to user's request using (UDDI) registry.

Therefore, it would have been obvious to one ordinary skilled in the art at the time the invention was made to combine the teachings of Murto "UDDI for server retrieval" with the teachings of Kenner in order to provide wide variety of services available on the internet to a client or user using UDDI registry.

7. As to claim 11, Kenner discloses the invention substantially, including, retrieving a list of stream servers\_(Kenner, Fig.2, Col.9, lines 39-49, where list of stream/content servers are retrieved);

Evaluating the list of stream servers (Kenner, Col.5, lines 42-43),

Selecting stream server on the list (Col.5, lines 61-63),  
detecting the data transfer rate between the client machine and the distributed communication system (Col.10, lines 63-65),  
intercepting a request for streaming a media file (Col.6, lines 31-36 and Kenner, Col.5, lines 11-12, where directing user request for specific web content is intercepting a request for streaming a media file), if the stream server can not handle the format of the requested streaming media file (Kenner, Col.14, lines 64-67 and Col.15, lines 1-10, where based on the rating of the clip is intercepted and authorized or declined based on foregoing information)

modifying the streaming request by appending preference information for streaming of the requested media file (Kenner, Fig.3, Col.15, lines 1-35, where preferences are created from the original media file request and Col.6, lines 37-40),  
and

sending the modified streaming request to the stream server selection unit (Fig.1, Element-32, Col.6, lines 34-36, where inherently selection and data request is handled by MSP, which can be interpret as selection unit).

Kenner however is silent on disclosing explicitly, "a universal description, discovery and integration (UDDI) directory service".

Murto however discloses, "a universal description, discovery and integration (UDDI) directory service" (Murto, [0021], where websites are search according to user's request using (UDDI) registry.

Therefore, it would have been obvious to one ordinary skilled in the art at the time the invention was made to combine the teachings of Murto "UDDI for server retrieval" with the teachings of Kenner in order to provide wide variety of services available on the internet to a client or user using UDDI registry.

8. As to claim 3, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, evaluating the list of stream servers further includes the step of retrieving and considering the stream server's capabilities (Col.11, lines 12-16), further comprises the step of determining operating parameters of each stream server on the list of stream servers, wherein the operating parameters are formed by information about the supported media formats of the stream servers (Kenner, Fig.2, Col.9, lines 53-57, where test of content provider group is disclosed which is based on data type which is operating parameter based on media format also Col.9, lines 32-33, where weighting factors are disclosed in association with server/client configuration).

9. As to claim 4, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, further includes the step of retrieving and considering the player availability (Kenner, Col.6, lines 13-15, where outage metric can be interpret as if resources are available to execute the file, which can be a software or media player).

10. As to claim 5, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, wherein the step of retrieving and considering preferences from the client (Col.6, lines 25-27), further comprises the steps of retrieving and

considering a list of all available media players at the client and retrieve and considering a preferred media player (Kenner, Col.14, lines 32-43, where media player at client machine is disclosed and Col.14, lines 44-52, where media player preferred format is disclosed).

11. As to claim 6, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, further includes the step of retrieving and considering the client connectivity (Col.10, lines 1-4).

12. As to claim 7, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, further includes the step of weighting one or more considered parameters (Col.9, lines 32-33).

13. As to claim 8, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, determining whether or not the stream server can handle streaming of the requested media file (Col.5, lines 52-56, where different tests are performed to evaluate if users request can be processed).

14. As to claim 9, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, further comprising the step of determining whether or not the format of the media file has changed (Col.14, lines 46-48).

15. As to claim 10, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, determining whether or not the quality of the media file is to



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high for the connection from the selected stream server to the client machine (Col.10, lines 60-62).

16. As to claim 12, Kenner and Murto disclose the invention substantially as in parent claim 11 above, including, further comprising the initial step of detecting the capabilities of the client machine (Col.9, lines 58-63).

17. As to claim 13, Kenner and Murto disclose the invention substantially as in parent claim 11 above, including, further comprising the step of retrieving preferences predetermined by a user of the client machine (Col.6, lines 37-40).

18. As to claim 14, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, a device for enhancing streaming operation in a distributed communication system providing communication links between a plurality of stream servers, a client machine requesting a particular media file, and a stream server selection unit, the device being configured to perform a method according to claim 1 (Fig.1, Col.8, lines 13-19).

19. As to claim 15, Kenner and Murto disclose the invention substantially as in parent claim 1 above, including, a computer program product stored on a computer usable medium, comprising computer readable program means for causing a computer to perform a method according to claim 1 (Col.22, lines 8-17).

**Examiner's Note:** Examiner has cited particular columns and line numbers in the references, as applied to the claims above for the convenience of the applicant.

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Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in its entirety as potentially teaching of all or part of the claimed invention, as well as the context.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tauqir Hussain whose telephone number is 571-270-1247. The examiner can normally be reached on 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bunjob Jaroenchonwanit can be reached on 571 272 3913. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

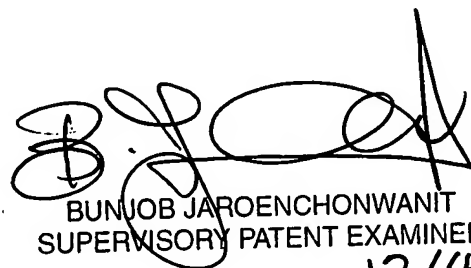
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USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TH

11/25/2007



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SUPERVISORY PATENT EXAMINER

12/4/7